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for the sale of real property subject to a life estate. From a decree dismissing complainant's bill on demurrer, he appeals. Affirmed.

R. R. Florence, Brockenbrough Lamb, and M. L. Masinter, all of Richmond, for appellant.

E. B. Thomason, David Meade White, Smith & Gordon, and Melvin Flegenheimer, all of Richmond, for appellees.

LYNCHBURG TRACTION & LIGHT CO. v. GORDON.

June 13, 1918.

[96 S. E. 195.]

1. Appeal and Error (§ 1002*)—Review—Injuries to Servant—Conflicting Evidence.—Where the conflicting evidence permitted two versions of the facts under which the accident to the workman occurred, the selection of the more credible version was exclusively within the province of the jury.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

2. Master and Servant (§ 231 (2)*)—Injuries to Servant—Reliance on Vice Principal's Statement.—Where the assistant foreman's testimony showed that he was the vice principal, the servant had the right to rely on his statement that current in a transmission wire was turned off when he ordered the servant to cut the wire; hence it was immaterial whether rubber gloves or other instrumentalities should have been used.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 702.]

3. Master and Servant (§ 231 (2)*)—Injuries to Servant—Reliance on Assurances.—If assistant foreman ordered servant to ascend pole and cut wire, and assured him that there was no current in the wire, and plaintiff, relying on such assurance, took hold of the wire and was injured, he could recover.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 702.]

4. Master and Servant (§ 265 (14)*)—Injuries to Servant—Reliance on Assurances—Burden of Proof.—A servant injured by touching a live wire which the foreman had assured him was dead had the burden of proving that the foreman ordered him to cut the wire and assured him it was dead.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 722.]

5. Master and Servant (§ 245 (4)*)—Injuries to Servant—Reliance on Assurance.—If a servant who was an experienced lineman, working about highly charged wires daily and knowing how to handle them, obeyed an instruction, given without assurances, to cut a wire, he could not recover when burned by the current in the wire.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 709.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Master and Servant (§§ 107 (5), 205 (6)*)—Injuries to Servant—Assumption of Risk—Shifting Conditions.—If the foreman, in the discharge of a nonassignable duty, assured the plaintiff that the wire was dead, there was nothing upon which the doctrine of assumed risk or shifting conditions could rest.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 674, 699.]

7. Appeal and Error (§ 197 (3)*)—Questions Not Raised Below—Variance.—The objection that plaintiff recovered on a different state of facts than those alleged in the petition cannot be raised for the first time on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 562.]

Error to Corporation Court of Lynchburg.

Action by Harry N. Gordon against the Lynchburg Traction & Light Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Caskie & Caskie, of Lynchburg, for plaintiff in error.

Volney E. Howard and *H. C. Featherston*, both of Lynchburg, for defendant in error.

JEFFRIES et al. v. JEFFRIES' EX'R.

June 13, 1918.

[96 S. E. 197.]

1. Infants (§ 90*)—Appearance—Guardian ad Litem.—Where attorney for one defendant was appointed guardian ad litem for infants interested in the litigation, but no answer was filed by him as guardian ad litem, an indorsement by such attorney of an order of revival, "Seen," was insufficient evidence of acceptance of the office of guardian ad litem, and did not amount to an appearance of the infant by his guardian.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 478.]

2. Judgment (§ 243*)—Persons Not Parties.—A bill to set aside a deed, which simply alleged that defendant had fraudulently conveyed plaintiff's property to his wife, was insufficient to sustain a judgment against remainderman under such deed, where such remainderman did not appear, although the deed was introduced in evidence.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 278.]

3. Judgment (§ 112*)—Default—Notice.—Failure to appear in response to a notice by publication is not a confession of the allegations of a bill, and defendant is not bound by depositions taken previous to such publication; and such is true, under Code 1904, § 3232, providing that one publication may be notice of all proceedings in a cause subsequent to the completion of the order.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 240.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.